Supreme Court, U.S.
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No. 2

In The

SUPREME COURT OF THE UNITED STATES

MATTHEW A. CRAIG,

Petitioner

v.

JOHN BRIGADIER, SUSAN M. BRIGADIER, DAVID L. BRIGADIER, JACQUELYN F. LENSON, RISER FOODS COMPANY, d/b/a GIANT EAGLE, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MATTHEW A. CRAIG,	)	
Plaintiff	)	Case No. 1:04CV1741
vs.	)	JUDGE ANN ALDRICH
JOHN BRIGADIER, et al.,	)	ORDER
Defendants.	)	

The Court, concluding that no genuine issues of material fact remain on the plaintiff's claims, has filed its memorandum and order granting summary judgment to defendants. Therefore,

IT IS ORDERED that the motions for summary judgment (Docket No. 25) is granted, final judgment is entered in favor of all defendants, and the case is dismissed.

This judgment is final and appealable.

s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: March 30, 2006

United States District Court,
N.D. Ohio, Eastern Division.

Matthew A. CRAIG, Plaintiff,
v.
John BRIGADIER, et al., Defendants.

No. 1:04CV1741.

March 30, 2006.

Matthew A. Craig, Vermilion, OH, pro se.

Mark V. Webber, Robert M. Wolff, Duvin, Cahn & Hutton, Cleveland, OH, for Defendants.

MEMORANDUM AND ORDER

ALDRICH, J.

In this action, originally filed in the Cuyahoga County Court of Common Pleas, Matthew Craig ("Craig") challenges the resolution of a dispute with his former employer, Riser Foods Company, d/b/a Giant Eagle, Inc. ("Giant Eagle"). On August 26, 2004, defendants alleged federal jurisdiction over Craig's claims under the Labor Management Relations Act (LMRA), 29 U.S.C. § 158(a), and removed the case to this court (Docket No. 1). On May 23, 2005, the court denied Craig's motion to remand the case (Docket No. 20), finding that Craig's

claims of defamation, libel, slander, conspiracy, and tortious interference with contract are properly read as claims for improper discipline and discharge under the CBA, and thus completely pre-empted under § 301 of the LMRA. Now before the court is a motion for summary judgment under Federal Rule of Civil Procedure 56(c), filed by Giant Eagle (Docket No. 25). For the following reasons, the court grants this motion, and enters judgment in favor of all defendants.

I. Background

On July 27, 2003, Craig began work as a part-time grocery clerk at the Giant Eagle on Southland Drive in Middleburg Heights. As is required of all such Giant Eagle employees, Craig became a member [*2] of United Food & Commercial Workers Union Local No. 880 ("UFCW"). Craig's employment was thus subject to the provisions of the current collective bargaining agreement ("CBA") governing the relationship between Giant Eagle and its UFCW member employees.

By the spring of 2004, Craig was given the title of "Manager in Charge," which carried with it some slight authority over other employees. (Craig has summarized the extent of his authority as the ability "to send [others] home for the remainder of their shift [sic] for insubordination.") John Brigadier was among the employees assigned to work shifts during which Craig served as "Manager in Charge."

On June 24, 2004, Brigadier lodged a complaint of sexual harassment against Craig. Giant

Eagle authorities considered this complaint, along with several similar claims against Craig made by other employees, and on June 25, 2004, the company removed Craig's "Manager in Charge" title, without reduction in pay. On June 30, 2004, a meeting was held between Craig, Human Resources Manager Jacquelyn Lenson, and Manager of Employee Relations Larane Hulsman. The meeting did not proceed amicably (Craig reportedly walked out midway through), and Craig's employment was terminated shortly thereafter, for insubordination.

On July 13, 2004, Craig filed a formal grievance against Giant Eagle, alleging that he was wrongfully discharged for seeking redress against those making defamatory statements about him, and challenging various aspects of the company's process for handling sexual harassment claims. Craig demanded reinstatement and an award of lost wages. On July 27, 2004, Craig met with UFCW representatives and store management personnel for a grievance hearing. Following this meeting, Giant Eagle denied Craig's grievance, finding that he was terminated for just cause. Giant Eagle claims that the parties also "met again subsequently, and the Company again denied the grievance." Defendants' **[*3]** Motion at 5.

On July 20, 2004, Craig filed a complaint in the Cuyahoga County Court of Common Pleas. (He amended the complaint on August 5, 2004). Craig named Giant Eagle as a defendant, as well as Giant Eagle employees John Brigadier and Jacquelyn Lenson, Brigadier's parents David and Sue, and an

unnamed "John Doe" party (also employed by Giant Eagle). Craig's complaint includes 14 counts of slander, libel, defamation, tortious interference with employment and contractual relationships, and civil conspiracy allegedly committed by these parties, and/or various combinations thereof. As noted, Giant Eagle removed the case to this court on August 26, 2004, and the court upheld removal as proper.

On March 25, 2005, an arbitration hearing was held on Craig's appeal of the adverse decision(s) at the grievance stage. On June 22, 2005, arbitrator Patricia Thomas Bittel issued her post-hearing decision on the matter. The arbitrator ruled entirely in favor of Giant Eagle, finding that Craig was properly terminated for insubordination under the terms of the CBA, that Craig would not benefit from progressive discipline, and that Craig's version of events was not credible.

II. Discussion

Under Rule 56(c), summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 323-25, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Hedrick v. W. Reserve Care Sys.*, 355 F.3d 444, 451 (6th Cir.2004).

If the movant succeeds, the burden then shifts to the nonmoving party to demonstrate the existence of a material dispute as provided in Rule 56(e): **[*4]**

> [a]n adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed.R.Civ.P. 56(e); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Parties opposing summary judgment must go beyond the pleadings and produce some type of evidentiary material in support of their position. *See Celotex*, 477 U.S. at 324.

In determining whether a genuine issue of material fact exists, this Court must view the evidence in a light most favorable to the nonmoving party. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); *Hamby v. Neel*, 368 F.3d 549, 556 (6th Cir.2004); *Williams v. Int'l Paper Co.*, 227 F.3d 706, 710 (6th Cir.2000). A fact is "material" only if its resolution will affect the outcome of the lawsuit. *Anderson*, 477 U.S. at 248. Determination of whether an issue is "genuine" requires consideration of the applicable evidentiary

standards. Thus, in most civil cases, the Court must decide whether the evidence is such that "reasonable jurors could find by a preponderance of the evidence that the [nonmoving party] is entitled to a verdict" or whether the evidence is "so one-sided that [the moving party] must prevail as a matter of law." *Id.* at 252. Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex,* 477 U.S. at 322.

Giant Eagle claims that no genuine issue of material fact remains on Craig's claims, owing to their preemption by the LMRA, and the final and binding decision of the arbitrator that Craig was terminated for just cause. In its May 23 order, the court agreed that "Craig's claims are all functionally equivalent to a claim for breach of the collective bargaining agreement, and therefore pre-empted by the **[*5]** LMRA[.]" Docket No.20, at 3-4. "[R]esolution of Craig's claims of defamation, libel, slander, conspiracy, and tortious interference with contract and employment would require this Court to analyze and interpret the provisions of the applicable CBA ... these claims are therefore pre-empted under LMRA." *Id.* at 4.

Since the court issued its opinion on federal jurisdiction last May, the arbitrator has issued an opinion which obviates the need for any further analysis or interpretation. Besides allowing the case

to proceed in federal court, complete LMRA preemption requires that the court enforce arbitration as Craig's exclusive venue for challenging his termination. As a member of UFCW, Craig is deemed to have bargained for a CBA provision allowing union representation in the grievance process, relinquishing in turn the right to challenge said process in federal court. As the Supreme Court has consistently held,

> [w]hen the parties include an arbitration clause in their collective-bargaining agreement, they choose to have disputes concerning constructions of the contract resolved by an arbitrator. Unless the arbitral decision does not draw its essence from the collective bargaining agreement, a court is bound to enforce the award and is not entitled to review the merits of the contract dispute.

W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber, 461 U.S. 757, 764, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983)(quoting *Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593, 596, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960)). "Subject to very limited judicial review, the employee will be bound by the result according to the finality provisions of the agreement." *Sparks v. International Union, United States Auto., Aerospace & Agricultural Implement Workers,* 980 F.2d 394, 398 (6th

Cir.1992)(citing *DelCostello v. Teamsters,* 462 U.S. 151, 164, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983)).

In challenging the arbitral decision at issue here, Craig makes no allegation that could be read as an appeal to the "essence of the collective bargaining agreement." Nor does he endeavor to prove that the Union's conduct in representing him was sufficiently poor as to constitute a breach of duty of fair [*6] representation-an "indispensable predicate," *id.,* to bringing the type of action a court may hear "notwithstanding the outcome or finality of the grievance or arbitration proceeding." *DelCostello,* 462 U.S. at 164.

Instead, Craig limits his opposition to repeating his arguments that remand is proper, and agitating for a reversal of the applicable Sixth Circuit precedent. Craig may well believe that "Several [of the Circuit's] conclusions of law" have been "in error," Plaintiff's Memorandum in Opposition at 7, but this court is bound by those conclusions nonetheless. The court also stands by its determination that the facts of Craig's case bear more than a passing resemblance to those in *DeCoe v. General Motors Corp.,* 32 F.3d 212 (6 Cir.1994) and *Jones v. General Motors,* 939 F.2d 380 (6th Cir.1991), cases in which the discharged plaintiffs raised claims such as defamation, tortious interference, and intentional infliction of emotional distress. The Sixth Circuit upheld the finding of preemption in those cases; the provisions of the LMRA must likewise govern the resolution of Craig's claims.

Because Giant Eagle has successfully demonstrated that the arbitrator ruled in its favor, that the decision of the arbitrator was final, and that the provisions of both the LMRA and the relevant CBA require this court to enforce that decision against Craig, the company has carried its burden to show the absence of genuine issues of material fact concerning Craig's pre-empted claims. By re-asserting his previous unsuccessful arguments, and failing to challenge the validity of the arbitration process in any respect, Craig has not carried his corresponding burden in response. Summary judgment is therefore appropriate on all of Craig's claims. [*7]

III. Conclusion

For the foregoing reasons, the court grants the motion for summary judgment, and enters judgment in favor of all defendants. The outstanding motion for a protective order, seeking a delay of the discovery process pending a ruling on the dispositive motion (Docket No. 27) is therefore denied as moot. The court further denies the defendants' motion for Rule 11 sanctions (Docket No. 34, alleging that Craig has frivolously joined uninvolved parties).

This order is final and appealable.

IT IS SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MATTHEW A. CRAIG, Plaintiff	) Case No. 1:04CV1741
vs.	) JUDGE ANN ALDRICH
JOHN BRIGADIER, ET AL., Defendants.	) MEMORANDUM AND ORDER

In this action, originally filed in the Cuyahoga County Court of Common Pleas, Matthew Craig ("Craig") seeks resolution of a dispute with his former employer, Riser Foods Company, d/b/a Giant Eagle, Inc. ("Giant Eagle"). On August 26, 2004, defendants alleged federal jurisdiction over Craig's claims under the Labor Management Relations Act (LMRA), 29 U.S.C. § 158(a), and removed the case to this court (Docket No.1). Now before the court is a motion to remand for lack of subject matter jurisdiction filed by Craig (Docket No.7). For the following reasons, the court finds that removal was proper, and denies this motion.

I. Background

On July 20, 2004, Craig filed a complaint in the Cuyahoga County Court of Common Pleas. The complaint names Giant Eagle as a defendant, as well

as Giant Eagle employees John Brigadier and Jacquelyn Lenson, Brigadier's parents David and Sue[1], and an unnamed "John Doe" party (also employed **[*2]** by Giant Eagle). Craig's complaint includes 14 counts of slander, libel, defamation, tortious interference with employment and contractual relationships, and civil conspiracy allegedly committed by these parties, and/or various combinations thereof.

Craig began work as a part-time grocery clerk at the Giant Eagle on Southland Drive in Middleburg Heights on July 27, 2003. As is required of all such Giant Eagle employees, Craig became a member of United Food & Commercial Workers Union Local No. 880 ("UFCW"). At some point in his tenure at the store - Craig claims in late March of2004 - Craig was given the title of "Manager in Charge," which carried with it some slight authority over other employees. (Craig summarizes the extent of his authority as the ability "to send [others] home for the remainder of their shift [sic] for insubordination.") John Brigadier was apparently among the employees assigned to work shifts during which Craig served as "Manager in Charge."

Some time in June of 2004, Brigadier lodged a complaint of sexual harassment against Craig. Giant Eagle authorities considered this complaint, along

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[1] Craig amended his complaint on August 5, 2004, to include the correct names of Brigadier's parents. As originally filed, the document improperly named "Denise and Bruce Brigadier."

with several similar claims against Craig made by other employees, and on June 25, 2004, the company removed Craig's "Manager in Charge" title, without reduction in pay. On June 30, 2004, a meeting was held between Craig, Human Resources Manager Jacquelyn Lenson, and Manager of Employee Relations Larane Hulsman. The meeting did not proceed amicably, and Craig's employment was terminated shortly thereafter. (Giant Eagle claims a termination date of June 30, for insubordination; Craig claims July 1, for the variety of allegedly illegitimate reasons outlined in his complaint.)

On July 13, 2004, Craig filed a formal grievance against Giant Eagle, alleging that he was **[*3]** wrongfully discharged for seeking redress against those making defamatory statements about him, and challenging various aspects of the company's process for handling sexual harassment claims. Craig demanded reinstatement and lost wages. On July 27, 2004, Craig met with UFCW representatives and store management personnel for a grievance hearing. Following this meeting, Giant Eagle denied Craig's grievance and his request for reinstatement and lost wages. Giant Eagle reports that UFCW has declined to pursue the matter further; Craig alleges that he "is currently appealing ... pursuant to an alternative dispute resolution process set forth in the agreement."

By "agreement," Craig refers to the current incarnation of the Collective Bargaining Agreement ("CBA") governing the relationship between Giant Eagle and its UFCW member employees. The CBA

governed the terms and conditions of Craig's employment at all stages, and it set forth the procedures followed by Craig in challenging his demotion and termination.

In removing the case to this court, Giant Eagle asserts that Craig's claims of defamation, libel, slander, conspiracy, and tortious interference with contract are in fact properly read as claims for improper discipline and discharge under the CBA. Such claims would be completely pre-empted under § 301 of the LMRA. Craig counters that interpretation of the CBA is in no way necessary to resolve his claims, which, he alleges, sound completely in state law.

II. Discussion

Federal law permits a defendant in a state civil action to remove it to a federal district court if such action "might have been brought there originally." *Oklahoma Tax Commission* v. *Graham,* 489 U.S. 838, 840 (1989). The original jurisdiction of the district court can be "founded on a claim or right arising under the Constitution, treaties or laws of the United States" without regard to the citizenship or residence of the parties. *See* 28 U.S.C. §1441(b). As the removing party, Giant Eagle bears the burden of **[*4]** establishing the existence of original jurisdiction in this Court. *Ahearn* v. *Charter Towns hip of Bloomfield,* 100 F.3d 451, 453-54 (6th Cir. 1996).

The crux of Giant Eagle's argument for removal is its contention that Craig's claims are all

functionally equivalent to a claim for breach of the collective bargaining agreement, and therefore pre-empted by the LMRA, which states:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce ... may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a)(2004). "[T]he Supreme Court has held that section 301 preempts state law rules that substantially implicate the meaning of collective bargaining agreement terms." *DeCoe* v. *GMC,* 32 F.3d 212,216 (6th Cir. 1994), citing *Allis-Chalmers Corp.* v. *Lueck,* 471 U.S. 202, 210 (1985).

Giant Eagle argues that resolution of Craig's claims of defamation, libel, slander, conspiracy, and tortious interference with contract and employment would require this Court to analyze and interpret the provisions of the applicable CBA, and that these claims are therefore pre-empted under LMRA.

In DeCoe, the Sixth Circuit explained its "two-step approach for determining whether section 301 preemption applies."

> First, the district court must examine whether proof of the state law claim requires interpretation of collective

> bargaining agreement terms. Second, the court must ascertain whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law. If the right both is borne of state law and does not invoke contract interpretation, then there is no preemption. However, if neither or only one criterion is satisfied, section 301 preemption is warranted.

Id. at 216 (citations omitted).

Upon review of the facts underlying Craig's claims, it is clear that preemption is warranted and that removal was thus proper. As in *DeCoe,* Craig may hope to satisfy the first requirement, in that no direct **[*5]** interpretation of specific CBA provisions should be necessary to resolve his claims. However, as in *DeCoe,* resolution of Craig's suit will "require [the] court to address relationships that have been created through the collective bargaining process and to mediate a dispute founded upon rights created by a CBA." *Id.* at 218, quoting *Jones* v. *General Motors,* 939 F.2d 380, 382-83 (6th Cir. 1991).

Craig complains of defamation, slander, and libel- torts which allegedly caused him harm in that they resulted in his demotion and termination. Examining the existence and (potentially) the severity of this harm will evidently require the court to evaluate the parameters for proper and improper discharge. Craig claims tortious interference with his employment and with his contractual

relationship with Giant Eagle (as well as conspiracy to interfere). Evaluation of the defendants' alleged attempts to "obtain a more lax working environment" for John Brigadier will require the court to assess the parameters of the current working environment and the functioning of various Giant Eagle grievance procedures, again as created by the CBA. As the second *DeCoe* criterion is satisfied, preemption is clearly warranted.

Despite Craig's efforts at establishing the contrary, the court finds that the facts of this case are analogous to those in *Jones,* in which the Sixth Circuit upheld a district court's finding that a GM employee's suit for breach of settlement agreement was pre-empted under § 301. Jones brought his complaint in state court

> for breach of a settlement agreement. This agreement was arrived at by virtue of a grievance process established by a collective bargaining agreement, signed only by the parties engaged in collective bargaining, and promised reinstatement to a job whose terms and conditions are created by and subject to a collective bargaining agreement.

Id. Here, Craig brought his complaint in state court for various wrongs alleged to have caused his demotion and termination. His termination resulted from a grievance process established by a CBA, signed only by the parties engaged in collective

bargaining, and ended his tenure at a job whose terms and conditions were **[*6]** created by and subject to a CBA. Craig cannot distance the substance of his claims from similar suits which happen to bear the "breach of employment contract" label by means of artful pleading. *Terwilliger* v. *Greyhound Lines, Inc.,* 882 F.2d 1033, 1037 (6thCir. 1989), citing *Hyles v. Mensing,* 849 F.2d 1213 (9th Cir. 1988).

Moreover, Craig's situation is not merely analogous, but almost identical, to that of the plaintiff in *DeCoe,* who "brought a complaint against several of his co-workers for whom he had served as a ... supervisor. The workers had previously filed administrative proceedings against the plaintiff for alleged sexual harassment, and the plaintiff subsequently sued them for defamation, tortious interference, and intentional infliction of emotional distress." *Mattis* v. *Massman,* 355 F.3d 902,906 (6thCir. 2004), citing *DeCoe,* 32 F.3d at 214-15. The court in *DeCoe* found preemption of these claims based on the second of the requirements outlined in its opinion.

Finally, the court is mindful of the Sixth Circuit's exhortations toward liberality and flexibility in this area. "[The court is not bound by the 'well-pleaded complaint' rule, but rather, looks to the essence of the plaintiff's claim, in order to determine whether the plaintiff is attempting to disguise what is essentially a contract claim as a tort." *DeCoe,* 32 F.3d at 216, citing *Terwilliger,* 882 F.2d at 1037. "[S]ection 301 constitutes an exception

to the well-pleaded complaint rule because [its] pre-emptive force ... is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization." *Fox* v. *Parker Hannifin Corp.*, 914 F.2d 795, 799 (6th Cir. 1990), quoting *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust,* 463 U.S. 1, 23 (1983). Given these reminders, and the clear evidence presented by Giant Eagle that interpretation of the CBA will be necessary for a resolution of Craig's claims, the court finds that removal was proper and that remand is not warranted. **[*7]**

III. Conclusion

For the foregoing reasons, the court denies Craig's motion in its entirety. The parties shall proceed with discovery according to a schedule to be set by the court at a Case Management Conference, to be held on **July 15, 2005 at 11:00 a.m. in Chambers 17B.** As a result of this decision, Craig's motions to proceed with discovery (Docket No. 13), and requests for ruling (Docket Nos. 16 & 18) are denied as moot.

IT IS SO ORDERED.

sf Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: May 23, 2005